

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JASMINE SANCHEZ,

Plaintiff,

Case No. 3:23-cv-00089-ART-CLB

V.

MADELINE PICKENS, et al.,

Defendants.

ORDER

I. DISCUSSION

Plaintiff Jasmine Sanchez, who is incarcerated in the custody of the Nevada Department of Corrections at Ely State Prison, is a prisoner proceeding *pro se*. On March 6, 2023, Plaintiff submitted a civil-rights complaint under 42 U.S.C. § 1983. (ECF No. 1-1.) Plaintiff did not file an application to proceed *in forma pauperis* or pay the \$402 filing fee. Before this case may proceed, Plaintiff must either file a complete application to proceed *in forma pauperis* or pay the \$402 filing fee in full.

The Court notes that on at least three prior occasions, this Court and the Ninth Circuit Court of Appeals have dismissed civil actions or appeals commenced by Plaintiff while in detention or incarcerated as frivolous or for failure to state a claim upon which any relief may be granted.¹

Pursuant to 28 U.S.C. § 1915(g), "if [a] prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it

¹ See *Sanchez v. Ely State Prison*, No. 3:18-cv-00373-MMD-WGC, ECF No. 14 (appeal dismissed by the appellate court as frivolous (No. 19-17131)); *Sanchez v. Dennis Homan*, No. 3:19-cv-00481-MMD-WGC (action dismissed by the district court for failure to state a claim); *Sanchez v. Ely State Prison*, No. 3:21-cv-00292-MMD-CLB (action dismissed by the district court for failure to state a claim); see also *Sanchez v. William Reubart*, No. 3:22-cv-00133-MMD-CLB, ECF No. 3 (finding that Plaintiff has 3 strikes). The Court takes judicial notice of its prior records in these matters.

1 is frivolous, malicious, or fails to state a claim upon which relief may be granted,”
2 he may not proceed *in forma pauperis* and, instead, must pay the full \$402 filing
3 fee in advance unless he is “under imminent danger of serious physical injury.”
4 28 U.S.C. § 1915(g).

5 In his complaint, Plaintiff alleges that in September 2022 the Defendants
6 used excessive force against him and threatened to make his life miserable in
7 retaliation for bringing lawsuits against them. (ECF No. 1-1.) The complaint is
8 very brief, and it does not include any further allegations about what has
9 transpired since September 2022. The brief allegations in the complaint do not
10 support that Plaintiff faced an ongoing danger of serious physical injury in March
11 2023 when he filed the complaint. *See Andrews v. Cervantes*, 493 F.3d 1047,
12 1055-56 (9th Cir. 2007) (holding that the exception to § 1915(g) applies if the
13 complaint makes a plausible allegation that the prisoner faced an ongoing danger
14 of serious physical injury at the time of filing).

15 In order to proceed *in forma pauperis*, Plaintiff must file both a complete
16 application to proceed *in forma pauperis* and a first amended complaint that
17 demonstrates that Plaintiff faced an ongoing danger of serious physical injury.
18 In any such complaint, Plaintiff should allege specific facts supporting the
19 existence of an ongoing danger of serious physical injury related to the claims
20 that he is bringing in this case.

21 The Court grants Plaintiff until June 23, 2023, to file a complete application
22 to proceed *in forma pauperis*, and a first amended complaint that supports that
23 Plaintiff faced an ongoing threat of serious physical injury. Alternatively, Plaintiff
24 may pay the \$402 filing fee in full.

25 If Plaintiff chooses to file an amended complaint, he is advised that an
26 amended complaint supersedes (replaces) the original complaint and, thus, the
27 amended complaint must be complete in itself. *See Hal Roach Studios, Inc. v.*
28 *Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he

fact that a party was named in the original complaint is irrelevant; an amended pleading supersedes the original"); *see also Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a plaintiff is not required to reallege such claims in a subsequent amended complaint to preserve them for appeal). Plaintiff's amended complaint must contain all claims, defendants, and factual allegations that Plaintiff wishes to pursue in this lawsuit. Moreover, Plaintiff should file the amended complaint on this Court's approved prisoner civil rights form, and it must be entitled "First Amended Complaint."

II. CONCLUSION

It is therefore ordered that on or before June 23, 2023, Plaintiff must either pay the full \$402 filing fee or file a fully complete application to proceed *in forma pauperis* with all three required documents: (1) a completed application with the inmate's two signatures on page 3, (2) a completed financial certificate that is signed both by the inmate and the prison or jail official, and (3) a copy of the inmate's trust fund account statement for the previous six-month period.

It is further ordered that if Plaintiff wishes to proceed *in forma pauperis*, on or before June 23, 2023, he must file a first amended complaint that demonstrates that Plaintiff faced an ongoing danger of serious physical injury when he initiated this case.

Plaintiff is cautioned that this action will be subject to dismissal without prejudice if Plaintiff fails to timely comply with this order. A dismissal without prejudice allows Plaintiff to refile the case with the Court, under a new case number, when Plaintiff can file a complete application to proceed *in forma pauperis* or pay the required filing fee.

The Clerk of the Court is directed to send Plaintiff the approved form application to proceed *in forma pauperis* for an inmate and instructions for the same and retain the complaint (ECF No. 1-1) but not file it at this time.

1 The Clerk of the Court is directed to send to Plaintiff the approved form for
2 filing a § 1983 complaint, instructions for the same, and a copy of his original
3 complaint (ECF No. 1-1). If Plaintiff chooses to file an amended complaint, he
4 should use the approved form and he will write the words "First Amended" above
5 the words "Civil Rights Complaint" in the caption.

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7 DATED THIS 25th day of April 2023.

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10 ANNE R. TRAUM
11 UNITED STATES DISTRICT JUDGE
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